



September 6, 2016

ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte*, MB Docket Nos. 16-42; CS Docket No. 97-80

Dear Ms. Dortch:

TiVo Inc. ("TiVo") hereby files this letter to express its support for the Consumer Video Choice Coalition's positions regarding the need for the Commission to ensure that a successor solution to CableCARD facilitates meaningful competitive choice and innovation that enables device and app makers to offer products that compete with those offered by MVPDs.¹ In addition, TiVo wishes to address two important issues relating to the above-captioned proceeding.

First, the Commission should require cable operators to continue to supply and support CableCARDS for consumers who use competitive devices. As TiVo and others have established in the record, requiring cable operators to continue to supply and support CableCARDS for competitive devices will ensure that consumers continue to have retail alternatives to operator-supplied devices while a successor solution is being developed and implemented. Assured availability of CableCARDS also will guarantee that consumers who use retail devices will not lose the features and functionality they have today.² Moreover, given the history of poor support for retail devices by certain operators, the Commission should require cable operators to continue to supply and support CableCARDS for retail devices in the critical interval between the time when the new rules

¹ Letter from Angie Kronenberg, INCOMPAS, to Marlene H. Dortch, FCC, MB Docket No. 16-42, CS Docket No. 97-80 (filed Sep. 1, 2016).

² See Comments of TiVo Inc. at 34-38 (filed Apr. 22, 2016) ("TiVo Comments"); Reply Comments of TiVo Inc. at 24-25 (filed May 23, 2016) ("TiVo Reply Comments"); Comments of Computer & Communications Industry Association at 33-34 (filed Apr. 22, 2016); Comments of Public Knowledge at 53-54 (filed Apr. 22, 2016); Comments of the Consumer Video Choice Coalition at 48-49 (filed Apr. 22, 2016).

go into effect and the time that competition actually takes hold in the market when the new solution is adequately supported by MVPDs. Specifically, the Commission should require cable operators to continue to supply and support CableCARDs for retail devices for a period of seven years, with the option for operators to petition for relief from this requirement upon a showing that the new solution adopted in this proceeding has created adequate competition in the market for video devices used to access MVPD programming.³

Second, TiVo reiterates its support for an exemption for small operators from rules adopted in this proceeding requiring adoption of a new CableCARD-successor solution. As TiVo has explained in the record,⁴ small operators lack the economies of scale to participate meaningfully in standards-setting and implement any technology changes required by a new standard in a cost-efficient manner. TiVo believes that successful adoption of a successor solution will not be harmed if smaller MVPDs are exempted from the rules, and that once such successor standards are in place and foster innovation and competition in navigation devices, smaller MVPDs will find it cost effective to use such standards voluntarily.

Please address any questions to the undersigned.

³ As the Commission has observed, there is some disagreement as to the continued effect of the CableCARD rules following the D.C. Circuit's decision in *EchoStar Satellite LLC v FCC*, 704 F.3d 992 (D.C. Cir. 2013), which vacated the *Second Report and Order* in CS Docket No. 97-80. See *Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 16-18, at 44, ¶ 89. However, at minimum, cable operators remain subject to the *First Report and Order's* requirement to make available a conditional access element separate from the host or navigation device in order to enable subscribers to use unaffiliated retail devices. See *Applications of Charter Communications, Inc., et al for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, FCC 16-59, at 121-22, ¶ 249 (rel. May 10, 2016). As the Consumer Video Choice Coalition has explained, this conditional access element, referred to as a Point of Deployment (or "POD") Module, was later referred to as a "CableCARD." See Reply Comments of the Consumer Video Choice Coalition at 23 & n.67 (filed May 23, 2016). Moreover, public statements from cable industry representatives make clear that they remain subject to the requirement to provide CableCARDs to competitive retail devices even after the sunset of the integration ban. See TiVo Comments at 36 (citing statements made to members of Congress by NCTA Chairman Michael Powell and Executive Vice President James Assey). The CableCARD support rules contained in Section 76.1205(b) of the rules were adopted in the *Third Report and Order* and remain in effect today.

⁴ TiVo Comments at 32-34; TiVo Reply Comments at 23-24.

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Respectfully submitted,

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